

ORIGINAL
JOHNSON UTILITIES, L.L.



0000119078

5230 East Shea Boulevard * Scottsdale, Arizona
PH: (480) 998-3300; FAX: (480) 483-7908

2010 OCT 26 A 11:59

AZ CORP COMMISSION
DOCKET CONTROL

October 26, 2010

Mr. Steven Olea, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

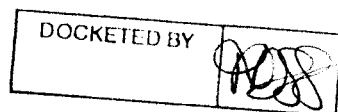
RE: Johnson Utilities Company, H2O, Diversified Water Utilities,
Queen Creek Water Company: Compliance with Decision No. 65840
Notice of Violation from ADEQ dated October 19, 2010
WS-02987A-99-0583; WS-02987A-00-0618; W-02234A-00-0371; W-02859A-
00-0774; W-01395A-00-0784

Dear Mr. Olea:

On October 22, 2010, we received a Notice of Violation ("NOV") from the Arizona Department of Environmental Quality ("ADEQ") dated October 19, 2010. A copy of the NOV is attached hereto as Attachment 1. Our response to ADEQ is attached hereto as Attachment 2.

We would like the opportunity to meet with you and discuss the circumstances of the NOV, when you have the time available. We will contact you to try and set up a date and time that will work with your schedule. Should you have any questions or would like any additional information prior to our meeting, please do not hesitate to contact me. We will continue to update the Commission on this issue as more information and correspondence becomes available. Thank you for your time and consideration on this matter.

Arizona Corporation Commission
DOCKETED
OCT 26 2010



Sincerely,

Brian P. Tompsett
Johnson Utilities, LLC

Cc: Docket Control
Brian Bozzo, Compliance Manager

ATTACHMENT 1



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007
(602) 771-2300 www.azdeq.gov



Benjamin H. Grumbles
Director

CERTIFIED MAIL
Return Receipt Requested

Case ID #: 120285

October 19, 2010

Johnson Utilities, LLC
Attention: Brian Tompsett
5230 E Shea Blvd
Scottsdale, AZ 85254-5750

Subject: Pecan Water Reclamation Plant, Place ID 18583
28539 N Gantzel Rd / Queen Creek, AZ 85242

NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Johnson Utilities, LLC as the owner/operator of Pecan Water Reclamation Plant has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during an inspection completed on June 30, 2010.

I. LEGAL AUTHORITY and NATURE OF ALLEGED SIGNIFICANT VIOLATION(S)

1. Permit 37771 (105324) - Section 2.8; Temporary Cessation

The permittee shall give written notice to the Water Quality Compliance Section before ceasing operation of the facility for a period of 60 days or greater.

The Arizona Pollutant Discharge Elimination System (AZPDES) Outfall and Subsurface Recharge Facility are discharging facilities as listed in section 2.1 of Aquifer Protection Permit (APP) P-105324. Pursuant to a Stipulated Judgment, Case CV200801966, dated February 4, 2010, between Johnson Utilities and the Pecan Creek Community Association (PCCA), Johnson Utilities agreed to and was ordered by the Court to permanently vacate the property where the Subsurface Recharge Facility is located. ADEQ's inspection documented that the AZPDES Outfall has been capped and based on the Stipulated Judgment, Johnson Utilities is permanently barred from using the Subsurface Recharge Facility. ADEQ records indicate that Johnson Utilities did not provide written notification regarding the cessation of the AZPDES Outfall and Subsurface Recharge Facility until September 8, 2010, seven months after cessation.

2. Permit 37771 (105324) - 2.9; Closure

For a facility addressed under this permit, the permittee shall give written notice of closure to the Water Quality Compliance Section of the intent to cease operation without resuming activity for which the facility was designed or operated.

The AZPDES Outfall and Subsurface Recharge Facility are discharging facilities as listed in section 2.1 of APP P-105324. Pursuant to a Stipulated Judgment, Case CV200801966, dated February 4, 2010, between Johnson Utilities and the PCCA, Johnson Utilities agreed

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to and was ordered by the Court to permanently vacate the property where the Subsurface Recharge Facility is located. ADEQ's inspection documented that the AZPDES Outfall has been capped and based on the Stipulated Judgment, Johnson Utilities is permanently barred from using the Subsurface Recharge Facility. ADEQ records indicate that Johnson Utilities has not provided written notification regarding the closure of the AZPDES Outfall and Subsurface Recharge Facility, nor has Johnson Utilities submitted a closure plan.

3. A.A.C. R18-9-A208(A)

Failure to follow a compliance schedule established in an individual aquifer protection permit.

Under APP P-105324, Section 3.0, Compliance Schedule, Johnson Utilities was required to submit well installation reports within 60 after installation and completion of recharge testing. The report must include the well drillers' logs and results of testing necessary to determine the available recharge rates and a map showing the location of the wells installed including the latitudes and longitudes for each vadose zone recharge well. ADEQ records indicate that Johnson Utilities has submitted the required map, but has not submitted well drillers' logs and results of testing necessary to determine the available recharge rates.

4. Permit 37771 (105324) - 2.2.1 Engineering Design

The WRP was designed as per the design report prepared by Terry Moore, P.E., Moore and Associates, Inc., dated September 26, 2003 and finalized by Gregory H. Brown, P.E., Sunbelt Utility Services, L.L.C.

The design report for APP P-105324 includes the liftstation located at the Pecan WRP and the pumps located within the liftstation. Johnson Utilities has replaced the 100HP Flygt liftstation pumps authorized under APP P-105324 with 85HP Flygt pumps.

5. A.R.S. § 49-241(A)

Discharge without an Aquifer Protection Permit.

Johnson Utilities has disposed of effluent in the pecan groves at rates which constitute disposal rather than beneficial reuse as evidenced by the number of dead pecan trees in the groves.

II. LEGAL AUTHORITY and NATURE OF OTHER ALLEGED VIOLATION(S)

1. Permit 37771 - 2.1; Facility / Site Description

Under APP P-105324, Johnson Utilities was permitted to construct four aquifer injection wells and 12 vadose zone recharge wells.

ADEQ's inspection documented that Johnson Utilities had constructed 22 vadose zone recharge wells at locations that were not authorized under APP P-105324. Effluent disposal to the 22 vadose zone recharge wells is not authorized under APP-P105324.

III. DOCUMENTING COMPLIANCE

1. Within 5 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or written notification of closure of AZPDES Outfall Subsurface Recharge Facility as a discharging facility under APP P-105324.
2. Within 95 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or a Closure Plan for the AZPDES Outfall and Subsurface Recharge Facility as required under Section 2.9.1 of APP P-105324.
3. Within 60 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or a copy of the vadose zone recharge well completion report required by APP P-105324, Section 3.0. This report was not submitted with either the December 5, 2008, or the April 14, 2010, submittals. The report must provide as-built construction diagrams for the vadose zone recharge wells. Each diagram must be sealed by an Arizona registered geologist or other qualified registrant. The report must also provide infiltration testing/capacity data for the vadose zone recharge wells. ADEQ requires a demonstration of sufficient recharge capacity and infiltration rates for facility discharges. In the case of the Johnson Utilities Pecan WWTP, the placement, infiltration rates, and construction of the recharge wells must be demonstrated in order to demonstrate adequate disposal capacity for permitted flows of effluent.
4. Within 60 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or a complete and accurate response to ADEQ's letter dated September 28, 2010, entitled Inadequate Response to Comprehensive Request for Additional Information.
5. Within 90 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or an aquifer protection permit amendment application that demonstrates the disposal capacity for the Pecan Water Reclamation Facility after the closure of the AZPDES Outfall and Subsurface Recharge Facility, and a proposal for disposal of effluent in the pecan groves.

IV. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality, Attention: Daniel L. Czecholinski, Water Quality Compliance Assurance Unit, 1110 W Washington St, Phoenix, AZ 85007 MC: 5415B-1

V. STATEMENT OF CONSEQUENCES

Significant Violations

1. The time frames within this Notice for achieving and documenting compliance for the

violation(s) alleged in Section I of this Notice are firm limits. Failure to achieve or document compliance for the violation(s) alleged in Section I of this Notice within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames for achieving and documenting compliance for the violation(s) alleged in Section I of this Notice only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.

2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in Section I of this Notice as allowed by law.

Other Violations

3. ADEQ may take any enforcement action authorized by law for the violation(s) alleged in Section II of this Notice, if the violation(s) are not corrected, or if ADEQ determines that the violation(s) have not been corrected in the time frames within this Notice.

VI. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Daniel L. Czecholinski at (602) 771-4612.



Daniel L. Czecholinski, Manager
Water Quality Compliance Assurance Unit



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Benjamin H. Grumbles
Director

OCT 22 2010

CERTIFIED MAIL
Return Receipt Requested
October 19, 2010

7009 1680 0001 8238 5992
Case ID: 120285

Johnson Utilities, LLC
Attention: Brian Tompsett
5230 E. Shea Blvd.
Scottsdale, AZ 85254-5750

Re: Notice of Violation issued to Johnson Utilities, LLC, Pecan WRP, Place ID 18583

Dear Mr. Tompsett:

This letter constitutes the monthly update on the status of Arizona Department of Environmental Quality ("ADEQ") action resulting from ADEQ's inspection of the above-referenced site on June 30, 2010, as required by A.R.S. § 41-1009(H).

The attached Notice of Violation ("NOV") is an informal compliance assurance tool used by ADEQ to put a responsible party (such as a facility owner or operator) on notice that the Department believes a violation of an environmental requirement has occurred. It describes the facts known to ADEQ at the time of issuance and cites the requirement that ADEQ believes the party has violated.

Although ADEQ has the authority to issue appealable administrative orders compelling compliance, an NOV has no such force or effect. Rather, an NOV provides the responsible party an opportunity to do any of the following before ADEQ takes formal enforcement action: (1) meet with ADEQ and discuss the facts surrounding the violation, (2) demonstrate to ADEQ that no violation has occurred, or (3) document that the violation has been corrected.

ADEQ reserves the right to take a formal enforcement action, such as issuing an administrative order or filing a civil lawsuit, regardless of whether the Department has issued an NOV. Neither ADEQ's issuance of an NOV nor its failure to do so precludes the Department from pursuing these remedies. However, the timeliness of a complete response to this notice will be considered by ADEQ in determining if and how to pursue such remedies.

Sincerely,

Daniel L. Czecholinski, Manager
Water Quality Compliance Assurance Unit

Cc: Pinal County Health Department

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(520) 628-6733 **R4# F511-201**

ATTACHMENT 2

JOHNSON UTILITIES L.L.C

5230 East Shea Boulevard * Scottsdale, Arizona 85254
PH: (480) 998-3300; FAX: (480) 483-7908

October 25, 2010

Daniel L. Czecholinski, Manager
Water Quality Compliance Assurance Unit, MC 5415B-1
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

RE: Pecan Wastewater Reclamation Plant
Notice of Violation, Case ID 120285

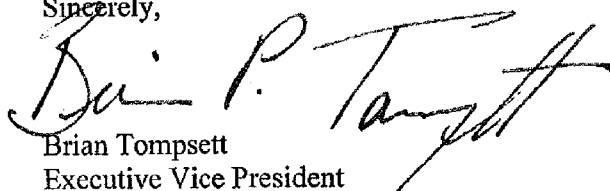
Dear Mr. Czecholinski:

On October 22, 2010, we received your October 19, 2010, Notice of Violation (NOV), Case ID 120285. In accordance with Section VI, we are requesting a meeting to discuss the NOV as soon as possible.

This letter also serves as the response to Item III(1) which is required within five (5) calendar days of receipt of the NOV, Case ID120285. None of the alleged violations ever occurred as it was not our intent to close the facility until all of our legal options have been exhausted. Since we have not reversed the stipulation, we submitted written notification to ADEQ on the temporary cessation of the facility on September 8, 2010, as you noted in the NOV. Included with the notification was the proposed Maintenance Plan for the temporary cessation.

If you have any questions or comments, please contact me a 480 998-3300.

Sincerely,


Brian Tompsett
Executive Vice President

Cc: Cynthia S. Campbell, ADEQ
Greg Brown, Johnson Utilities